

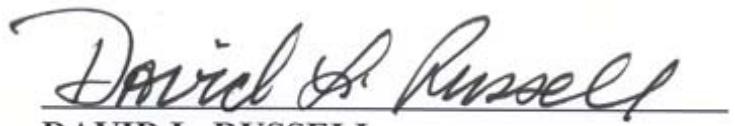
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ORDER

Before the Court are the Report and Recommendation of United States Magistrate Judge Suzanne Mitchell [Doc. No. 11] and Petitioner’s Objections to the Report and Recommendation [Doc. No. 15]. The Magistrate Judge correctly concluded that Petitioner’s petition for a writ of habeas corpus was untimely because it was not filed within 191 days after September 3, 2014. The Magistrate Judge specifically observed that Plaintiff did not claim entitlement to equitable tolling. Yet Plaintiff’s entire objection to the Report and Recommendation is predicated on the alleged applicability of equitable tolling. Because no argument or evidence supporting equitable tolling was presented to the Magistrate Judge, the Court refuses to entertain that argument now. *See Gonzales v. Quest Communications Corp.*, 160 Fed. Appx. *1-2 (10th Cir. Dec. 13, 2005); *Sommers v. Jones*, 2012 WL 6210118 at *1 n.1 (W.D. Okla. Dec. 13, 2012). Petitioner waived that argument by not presenting it to the Magistrate Judge. *See United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001); *Sommers v. Jones*, *supra*.

In accordance with the foregoing, the Court ADOPTS the Report and Recommendation of the Magistrate Judge and DISMISSES the amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 as time barred.

IT IS SO ORDERED this 15th day of January, 2016.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE